

MDL 1570 PLAINTIFFS' EXECUTIVE COMMITTEES

In re: Terrorist Attacks on September 11, 2001 (S.D.N.Y.)

VIA ECF

January 9, 2024

The Honorable Sarah Netburn, U.S. Magistrate Judge
Thurgood Marshall U.S. Courthouse, Room 430
40 Foley Square
New York, NY 10007

Re: *In Re: Terrorist Attacks on September 11, 2001*, 03 MDL 1570 (GBD) (SN)

Dear Judge Netburn:

The Plaintiffs' Executive Committees, along with counsel for the *Ashton* Plaintiffs, write to oppose the second item included in the submission last night by counsel for Saudi Arabia (ECF No. 9514). Saudi Arabia proposes a delay of uncertain length to the agreed 30-day period for redaction reviews of Plaintiffs' December 20, 2023 submissions (ECF Nos. 9484, 9486, 9488 and 9490), unbalancing the process the Court endorsed (ECF No. 9434), and seeking the court's approval for the later of two dates that would stretch into months. Plaintiffs firmly oppose any such delay.

At present, the Plaintiffs—who include the families who lost loved ones and individuals who were personally injured in the September 11th attacks—are not able to access critical filings in their own cases, filed by their own counsel, in opposition to Saudi Arabia's dispositive motion. In addition, the public is entitled to access to the documents to the extent properly protected information can be redacted.

Under Saudi Arabia's proposal, the lack of access to the judicial documents Plaintiffs submitted for the Court's consideration in the context of dispositive motions would endure for months, given the delay Saudi Arabia has proposed and the timeline required for reviews by the parties and the FBI. Any delay beyond the agreed 30 days is unnecessary, inappropriate, and will cause considerable distress to the plaintiffs. It also raises significant Constitutional issues related to public access to judicial documents. ECF No. 8923 at 3 (reminding the parties that "the public is presumptively entitled to documents submitted in connection with dispositive motions" (citing *Lugosch v. Pyramid Co. of Onondaga*, 435 F. 3d 110, 121 (2d Cir. 2006) ("documents submitted to a court for its consideration in a summary judgment motion are—as a matter of law—judicial documents"); *In re Zimmer M/L Taper Hip Prosthesis or M/L Taper Hip Prosthesis with Kinectic Tech. & Versyst Femoral Head Prod. Liab. Litig.*, No. 18-mc-02859 (PAC), 2021 WL 4706199, at *2 (S.D.N.Y. Oct. 8, 2021) ("Filings related to *Daubert* motions are judicial documents subject to a significant presumption of access under the common law and the First Amendment."); *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 142 (2d Cir. 2016))).

Saudi Arabia can offer no credible rationale for its proposal. In fact, during the parties' meet and confer, Saudi Arabia agreed that a 30-day redaction turnaround and subsequent filing on the public docket would apply to Plaintiffs' December 20, 2023 filings irrespective of defendants' motions to strike (which are procedurally improper and without merit in any case). The motion to strike, accordingly, has no bearing on the redaction process. Saudi Arabia has demonstrated consistently that

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it possesses sufficient resources to complete redaction reviews expeditiously alongside other work in the case. See, e.g., parties' *Daubert* briefs referred to in Court's memo endorsement at ECF No. 9414.

Plaintiffs respectfully ask that the Court maintain the current redaction review schedule, of which defendants Saudi Arabia and Dallah Avco have both already made use to file their respective motions to dismiss publicly (ECF Nos. 9436 and 9391 et seq.). The redaction review should be ordered to be completed on a 30-day turnaround, running from the date on which Plaintiffs submit the errata versions of their filings, as referenced in Plaintiffs' separate correspondence addressed to Your Honor today—filings to which Saudi Arabia and Dallah Avco have consented.

Respectfully submitted,

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cc: The Honorable George B. Daniels, via ECF